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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 1057

EL MUNDO, INC., *Petitioner,*

v.

PUERTO RICO LABOR RELATIONS BOARD, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

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No.

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PUERTO RICO LABOR RELATIONS BOARD, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

Petitioner, El Mundo, Inc., prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of the Commonwealth of Puerto Rico, entered on November 26, 1965 affirming a decision and order of the Puerto Rico Labor Relations Board holding that Petitioner committed an unfair labor practice under the Puerto Rico Labor Relations Act by virtue of an alleged breach of a collective bargaining agreement.

CITATIONS TO OPINIONS BELOW

The opinion and judgment of the Supreme Court of the Commonwealth of Puerto Rico are unofficially reported under number 139 of the 1965 series of the Bar Association of Puerto Rico; they are printed in Appendix A, infra, pp. 1a-3a, and are reproduced in the certified transcript. (R. 79)[1]

The decision and order of the Puerto Rico Labor Relations Board is not reported. It is printed in Appendix B, infra, pp. 4a-17a, and is reproduced in the certified transcript of the record. (R. 34)

JURISDICTION

The judgment of the Supreme Court of the Commonwealth of Puerto Rico is dated November 26, 1965 and was entered on the same date (Appendix A, infra, pp. 1a-3a; R. 79).

Since Petitioner is claiming a right under a statute of the United States, jurisdiction of this Court is invoked under 75 Stat. 417 (28 U.S.C. 1258(3)).

QUESTIONS PRESENTED

Whether, as regards an employer and a labor organization representing employees in an industry affecting commerce, and who meet the jurisdictional standards of the National Labor Relations Board:

1. Section 69(1)(f) of the Puerto Rico Labor Relations Act (29 LPRA 69(1)(f))[1a] is invalid as being in contravention to Section 301(a) of the Labor-Man-

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[1] References are to pages of the certified transcript of the Record which has been filed with this Court.

[1a] The Laws of Puerto Rico Annotated are herein referred to as LPRA.

agement Relations Act (61 Stat. 156, 29 U.S.C. 185 (a)), and Article I, Section 8, clause 3, of the Constitution of the United States;

2. Under federal substantive law a state is preempted from making the breach of a collective bargaining contract an unfair labor practice independent of the enforcement provisions of Section 301(a) of the Labor-Management Relations Act (61 Stat. 156, 29 U.S.C. 185(a));

3. Federal labor policy prohibits states from public enforcement of collective bargaining agreements through state unfair labor practice proceedings before a state administrative agency;

4. Federal labor policy requires that suits for breach or enforcement of collective bargaining agreements be brought by private actions in courts rather than before state administrative agencies.

STATUTES INVOLVED

The statutory provisions directly involved are Section 301(a) of the Labor-Management Relations Act (61 Stat. 156, 29 U.S.C. Section 185(a)) (hereinafter referred to as the Taft-Hartley Act or the LMRA) and Sections 2(7) and (9) thereof (61 Stat. 137, 29 U.S.C. 152(7) and (9)). The texts of these provisions are reprinted in Appendix C, infra, p. 18a. Also directly involved is Section 69(1)(f) of the Puerto Rico Labor Relations Act (29 LPRA 69(1)(f)) (hereinafter referred to as to PRLRA) the text of which is reproduced in Appendix C, infra, pp. 18a-37a, see specifically pp. 28a-29a.

STATEMENT OF THE CASE

Petitioner is a corporation in the newspaper and television business and is engaged in interstate commerce (R. 146). It imports goods in interstate commerce yearly in excess of $1,000,000 and has a gross volume of business in excess of $1,000,000 per year from its newspaper operations. Its television operations also exceed an annual gross volume of $1,000,000. On several occasions the National Labor Relations Board has exercised jurisdiction over its operations, including the certification of the collective bargaining unit involved in this case (R. 139-140).

On September 26, 1962, Petitioner entered into a collective bargaining agreement with the Puerto Rico Newspaper Guild, Local 225, Affiliated to the American Newspaper Guild, AFL-CIO (R. 7) (hereinafter referred to as the Union). On March 25, 1964, the Union filed an unfair labor practice charge against Petitioner before the Puerto Rico Labor Relations Board, charging Petitioner with violation of Section 69(1)(f) of the PRLRA (29 LPRA 69(1)(f)); see Appendix C, infra, pp. 28a-29a).

The PRLRA[2] establishes an administrative agency with investigative, prosecutive, and adjudicative powers, along the lines of the old Wagner Act (49 Stat. 499, 29 U.S.C. 151 et seq.).

The Board has power to investigate and decide charges of unfair labor practices, 29 LPRA 68, 70, but can deny its processes to any employer or labor organization that has not complied with certain filing

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[2] The full text of the Act is reproduced at Appendix C, pp. 18a-37a.

requirements. 29 LPRA 67. Among the matters which constitute an unfair labor practice is the violation of collective contracts by an employer, 29 LPRA 69(1)(f), or by a union, 29 LPRA 69(2)(a). This section contains a provision which permits the Board to dismiss any charge for breach of contract or for enforcement of an arbitration award if the charging party is currently in breach of the contract or has not complied with an order of the Board. Cf. *Drake Bakeries* v. *Local 50*, 370 U.S. 254 (1962); *Packinghouse Workers* v. *Needham Packing Company*, 376 U.S. 247 (1964). Upon finding a violation the Board enforces its order before the Supreme Court of the Commonwealth of Puerto Rico, 29 LPRA 70, where the Board is represented by the Secretary of Justice for the Commonwealth. 29 LPRA 71. Any employer who does not comply with a Board order relating to an unfair labor practice is prohibited from bidding on any public contract or from receiving any franchise, permit, or license, or any grant or loan of public funds, for a period of one year after the service of the Board's order. 29 LPRA 72(a). Furthermore, any person who willfully disobeys the Board is subject to a fine of up to $5,000 and/or imprisonment of up to one year. 29 LPRA 76.

On May 1, 1964, Respondent issued its formal complaint against Petitioner (R. 6) alleging violation of 29 LPRA 69(1)(f). Petitioner answered alleging as an affirmative defense Respondent's lack of authority over its activities by reason of the interstate character of its business (R. 14). A formal hearing took place where the same defense was orally argued (R. 94-96) and the interstate activities of Petitioner were entered in evidence (R. 146).

On April 21, 1965 the Official Examiner issued his report recommending that Respondent find that Petitioner violated the collective bargaining contract and that Petitioner take certain affirmative action (R. 17). On April 27, 1965 Petitioner filed exceptions to said report and alleged that error had been committed in assuming jurisdiction of Petitioner (R. 30). On June 9, 1965, Respondent issued its Decision and Order No. 391, finding that Petitioner violated Section 69(1)(f) of the PRLRA (29 LPRA 69(1)(f)) and thus committed an unfair labor practice. (See Appendix B infra, pp. 4a-17a; R. 34).

On July 8, 1965 Petitioner filed a Petition for Review before the Supreme Court of the Commonwealth of Puerto Rico (R. 1), in which it was alleged that Respondent erred in assuming jurisdiction over Petitioner.

On November 26, 1965, the Supreme Court rendered its opinion and judgment confirming Respondent and holding that the sanctioning by the federal law of an action for damages for breach of contract did not conflict with state administrative agency action which made this conduct a state unfair labor practice (Appendix A, infra, pp. 1a-3a; R. 79).

Petitioner has requested (R. 91-A) the Supreme Court of the Commonwealth of Puerto Rico to retain the Mandate in this case and the same has been granted (R. 91-D).

REASONS FOR GRANTING THE WRIT

This case "once again brings before the Court the troublesome question of where lies the line between permissible and federally preempted state regulation" of labor-management relations. See *Hanna Mining Co.* v. *District 2, Marine Engineers,* 15 L. Ed. 2d 254; — U.S. — (December 6, 1965).

The answer to this question will ultimately depend on whether the application of the challenged state law operates to frustrate the purpose of the federal legislation; *Teamsters, Local 20* v. *Morton,* 377 U.S. 252, 258 (1964); *Colorado Anti-Discrimination Committee* v. *Continental Air Lines,* 372 U.S. 714, 722 (1963); whether such state legislation is a "bane or a blessing" (see Mr. Justice Frankfurter's concurring opinion in *Bethlehem Steel Co.* v. *New York Labor Relations Board,* 330 U.S. 767, 783-784 (1947)). As the Court said in *De Veau* v. *Braisted,* 363 U.S. 144, (1960):

> ". . . would Congress, with a lively regard for its own labor policy, find in this state enactment a true real frustration, however dialectically plausible, of that policy?" (p. 153)

The questions presented are of importance to employers and unions in industries affecting interstate commerce in the Commonwealth of Puerto Rico and elsewhere where similar legislation exists.[3] This case

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[3] Colorado Labor Peace Act, Article 4, Chapter 80, Section 80-4-6(1)(g), (2)(d), Colorado Revised Statutes, 1953; Hawaii Employment Relations Act, Title 11, Revised Laws of Hawaii, 1955, Section 90-7(f), 90-8(c); Wisconsin Employment Peace Act, Wisc. Statutes, as amended, Sec. 111.06(1)(f), (2)(c). See, for a summary of all state labor relations acts, State Labor Relations Acts, U.S. Dept. of Labor, Bulletin 224, January 1961.

See *Tecumsah Products Co.* v. *Wisconsin E.R.B.* (1964), 24 Wis. 2d 188, 126 N.W. 2d 520. In *McLean Distrib. Co.* v. *Brewery and Beverage Drivers,* 254 Minn. 204, 94 N.W. 2d 514, cert. den. 360 U.S. 917 (1959), a state statute made breach of contract "an unfair labor practice" but enforceable only by private suit in the courts. The Union was enjoined from striking in violation of a "no strike clause." The Court has said that it has not yet reviewed the question of whether states may enjoin such strikes. See Lesnick, "State-Court Injunctions and the Federal Common Law of Labor Contracts; Beyond Norris-LaGuardia," 79 H.L.R. 757 (February, 1966); Ratner, "The Emergent Role of District Courts in National Labor Policy," 17 Labor Law Journal 36 (January, 1966).

will permit the Court to pass on a critical question in labor relations in an area of the developing law of federal state relations illustrated by a long series of cases. *Hill* v. *Florida*, 325 U.S. 538 (1945); *Bethlehem Steel Co.* v. *New York Labor Relations Board*, 330 U.S. 767 (1947); *Guss* v. *Utah Labor Relations Board*, 353 U.S. 1 (1957); *Youngdahl* v. *Rainfair*, 355 U.S. 131 (1957); *IAM* v. *González*, 356 U.S. 617 (1958); *International Union* v. *Russell*, 356 U.S. 634 (1958); *Hotel Employee's Union* v. *Sax Enterprises*, 358 U.S. 270 (1959); *Local 24, Teamsters* v. *Oliver*, 358 U.S. 283 (1959); *San Diego Bldg. Trades Council* v. *Garmon*, 359 U.S. 236 (1959); *Plumbers, etc. Local 298* v. *County of Door*, 359 U.S. 354 (1959); *De Veau* v. *Braisted*, 363 U.S. 144 (1960); *Dowd Box Co.* v. *Courtney*, 368 U.S. 502 (1962); *Smith* v. *Evening News Assoc.*, 371 U.S. 195 (1962); *Association of Journeymen* v. *Borden*, 373 U.S. 690 (1963); *Motor Coach Employees* v. *Missouri*, 374 U.S. 74 (1963); *Retail Clerks* v. *Schermerhorn*, 375 U.S. 96 (1963); *Teamsters, Local 20* v. *Morton*, 377 U.S. 272 (1964); *Republic Steel Corp.* v. *Maddox*, 379 U.S. 650 (1964); *Hanna Mining Co.* v. *District 2, Marine Engineers*, supra; *Linn* v. *Plant Guards Local 114*, — U.S. — (decided February 21, 1966). Cf. *Colorado Anti-Discrimination Committee* v. *Continental Air Lines*, 372 U.S. 714 (1963).

We believe that the questions presented by this petition find a ready answer in the legislative history, the current trend and philosophy of the developing federal cases, and in pragmatic considerations.

The general philosophy of the Court in leaving the implementation of federal labor law and policy in the hands of the National Labor Relations Board and the courts is fundamentally sound, and is directed by the

Congress. The vice of the Puerto Rico law is that it does not supplement but interferes with the process of collective bargaining required by federal law. The nature of the applicable law, the administration, remedies, and the presence or absence of penalties are intimately intertwined with the total process of collective bargaining under the LMRA. Freedom from molestation and hinderance in maintaining collective agreements of its vital concern to federal labor policy.[4]

The exposition of the Court in the second *Garmon* case, 359 U.S. 236 (1959), on the reach of the preemption doctrine continues to have vitality as to the questions presented here. The Court said, at pp. 241-242:

> "In determining the extent to which state regulation must yield to subordinating federal authority, we have been concerned with delimiting areas of potential conflict; potential conflict of rules of law, of remedy, and of administration. The nature of the judicial process precludes an ad hoc inquiry into the special problems of labor-management relations involved in a particular set of occurrences. . . . Our task is confined to dealing with classes of situations."

Potential conflict was the keynote throughout the second *Garmon* decision. This is particularly important in connection with comprehensive state labor relations laws administered by state agencies. To al-

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[4] In *Bethlehem* (supra) page 772, the Court said, ". . . It has long been the rule that exclusion of state action may be implied from the nature of the legislation and the subject matter although express declaration of such result is wanting. *Napier* v. *Atlantic Coast Line R. Co.*, 272 U.S. 605." The opinion, at pp. 775-776, quotes Mr. Justice Holmes, ". . . 'When Congress has taken the particular subject matter in hand, coincidence is as ineffective as opposition . . .' *Charleston R. Co.* v. *Varnville Co.*, 237 U.S. 597, 604."

low states to control such activities would "create potential frustrations of national purposes", would involve "too great a danger of conflict with national labor policy", and would only accentuate the "danger of conflict". The conflict with which the Justices were concerned was "conflict in its broadest sense". This question of conflict has been resolved by this Court with respect to the concurrent jurisdiction of the federal and state courts under Section 301(a); a uniform system of federal labor law must be applied. However, such resolution cannot be possible if each state can formulate and apply its own system of unfair labor practices through administrative boards with the power to hear suits for breach of contracts and to enforce administrative remedies and penalties.

State power remains, as the court declared in *Garmon,* only where the activity regulated was a merely peripheral concern of the Act" (see *IAM* v. *González,* 356 U.S. 617 (1958)), or where such activity "touched interests . . . deeply rooted in local feeling and responsibility" and "The compelling state interest, in the scheme of federalism, in the maintenance of domestic peace is not overridden" (see *UAW* v. *Russell,* 356 U.S. 634 (1958); *Youngdahl* v. *Rainfair,* 355 U.S. 131 (1957); *UAW* v. *WERB,* 351 U.S. 266 (1956); and *United Construction Workers* v. *Laburnum Corp.,* 347 U.S. 656 (1954)).[4a] See also *Linn* v. *Plant Guards Local 114,* supra.

[4a] In *Hanna Mining Co.,* supra, the Court, dealing with supervisors, a class clearly outside the definition of employees in the LMRA, said, at — U.S. —, 15 L. Ed. 254, p. 259:

> "The ground rules for preemption in labor law, emerging from our Garmon decision, should first be briefly summarized: in general, a State may not regulate conduct arguably 'protected by § 7, or prohibited by § 8' of the National Labor

The following language used by the Court below is particularly pertinent (Appendix A, p. 2a; R. 80):

> ". . . The fact that the Federal legislation admits an action for damages for such violation—Section 301, Taft-Hartley Act—and that such action for damages should be handled by the Courts, whether Federal or State, does not prevent our Labor Relations Board, as an administrative agency, from taking cognizance under our Act of such violation as an unfair practice . . ."

This decision of the Puerto Rico Supreme Court assumes the following as correct:

(1) That the jurisdiction of Respondent over Petitioner was based on state law and therefore Respondent is not bound by principles of federal substantive law under Section 301;

(2) That Section 301 does not preclude public enforcement of labor contracts by the states, as distinguished from private enforcement by the parties to the agreement;

(3) That Section 301 does not prevent a state from making a breach of contract that would be actionable under said federal legislation, also cognizable as an

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Relations Act, see 359 U.S., at 244-246; and the legislative purpose may further dictate that certain activity 'Neither protected nor prohibited' be deemed privileged against state regulation, cf. 359 U.S., at 245."

The instant case comes within the Court's last observation. The NLRB is required to interpret contracts in many situations. The potential for conflict is enormous. As one example, the PRLRA clearly sanctions a "union shop" without the thirty-day grace period under federal law. See PRLRA, Sections 63(7) and 69(2)(b) (Appendix C, pp. 21a, 30a.) Accordingly, the State Board would be required, in applying the PRLRA, to interpret collective agreements in interstate commerce contrary to federal law.

unfair labor practice before state administrative agencies.

This Court in two decisions in 1962 held that Section 301, which confers jurisdiction upon the federal district courts over suits for violation of collective bargaining agreements, does not deprive state courts of jurisdiction over such suits. *Dowd Box Co.* v. *Courtney*, 368 U.S. 502 (1962); *Local 174, Teamsters Union* v. *Lucas Flour Co.*, 369 U.S. 95 (1962). But in *Dowd Box*, the Court said in reviewing the legislative history of Section 301, "In Conference, however, it was decided to make collective bargaining agreements enforceable *only* in the Courts." Id. at p. 511 (emphasis supplied). And, it is now axiomatic that, where an interstate industry is concerned, federal substantive law must be applied in the interpretation of collective bargaining contracts, *Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448 (1957). Hence, state courts must apply federal labor law in exercising jurisdiction. They can not do this when they exercise only limited judicial review of a breach of contract suit brought before a state labor board. The Puerto Rico Labor Board applies state substantive law different from a federal common law based upon federal statute and national labor policy. See *Textile Workers Union* v. *Lincoln Mills*, supra.

The legislative history of the Taft-Hartley Act shows that in the Hartley bill violation of the terms of a collective bargaining agreement was to be considered an unfair labor practice subject to processing by the National Labor Relations Board. S. Rep. No. 105, 80th Cong. 1st. Sess., pp. 20, 21, 23; H.R. Rep. No. 245, 80th Cong., 1st Sess., p. 21. It was later

agreed in conference, in considering Section 301, that this provision of the law should be dropped and that, "once parties have made a collective bargaining contract, the enforcement of that contract should be left to the usual processes of the law and not to the National Labor Relations Board." H. Conf. Rep. No. 510, 80th Cong. 1st Sess., p. 42; *Textile Workers Union* v. *Lincoln Mills,* 353 U.S. 448, 452-453 (1957); *Dowd Box Co.* v. *Courtney,* 368 U.S. 502, 510-511 (1962); *Sinclair Refining Co.* v. *Atkinson,* 370 U.S. 195, 206-207, 208 (footnote 27) (1962); *Association of Westinghouse Salaried Employees* v. *Westinghouse Electric Corp.,* 348 U.S. 437 (footnote 2) (1955).

In *Dowd Box Co.* v. *Courtney,* 368 U.S. 502 (1962) the Court said, at page 506:

> "We start with the premise that nothing in the concept of our federal system prevents state *courts* from enforcing rights created by federal law . . ." (Emphasis supplied)

The Court, at pages 510-512, in dealing with the original legislative provisions to make breach of contract an unfair labor practice, again emphasized that state *court* jurisdiction was never displaced. However, nowhere in the legislative history of the Act is there any indication that Congress intended to permit the states to do that which it considered for its own legislative creature but rejected in favor of the "usual processes of the law." In fact, what the legislative record does show is a consistent emphasis on the creation of a forum for traditional judicial remedies in courts. See legislative appendix of *Textile Workers Union* v. *Lincoln Mills,* 353 U.S. 448, at pp. 485-546 (1957).

It should be noted that the court below does not seem to quarrel with the fact that actions under Sec-

tion 301 should be actions in courts, state or federal (Appendix A, p. 2a; R. 80). In effect, however, it concludes, contrary to the teachings of this Court, that the present action is not influenced in any manner by Section 301.

The Court said in *Sinclair Refining Co.* v. *Atkinson,* 370 U.S. 195, 207 (1962):

> ". . . Instead, the conferees, as indicated by the provision which came out of the conference and eventually became § 301, agreed that *suits for breach of such agreements should remain wholly private and 'be left to the usual processes of the law' and that, in view of the fact that these suits would be at the instance of private parties* rather than at the instance of the Labor Board, no change in the existing anti-injunction provisions of the Norris-LaGuardia Act should be made . . ." (Emphasis supplied)

The Court also discusses, at page 214:

> ". . . that if injunctions are necessary, the whole idea of enforcement of these agreements by *private suits* should be discarded in favor of enforcement through the *administrative machinery* of the Labor Board, as Senator Taft provided in his Senate Bill." (Emphasis supplied)

In enacting Section 301 Congress intended that private parties, using the usual processes of the law through suits in courts, enforce collective bargaining agreements. Congress did not intend public enforcement through administrative machinery.

A state is not at liberty to impinge on an area of regulation designated to be free from state action, *Garner* v. *Teamsters,* 346 U.S. 485, 500 (1953); *Teamster Local 20* v. *Morton,* 377 U.S. 252, 260 (1964),

especially where Congress has considered the kind of procedure and remedy enacted by the state and decided against it. *Amalgamated Assoc.* v. *Wisconsin Employment Relations Board,* 340 U.S. 383, 394-395 (1951); *International Union* v. *O'Brien,* 339 U.S. 457, 458 (1951). Yet in Puerto Rico, an employer in interstate commerce is not only subject to a Section 301 breach of contract suit, but, if the present decision stands, he is also subject to unfair labor practice charges for the same breach before a state labor board with procedures peculiar to an administrative body. Furthermore, the employer may be refused the processes of Respondent if in the view of Respondent he lacks "clean hands" or because he has not complied with Respondent's filing requirements. Such an employer in addition to being liable for money damages will have the full weight of public enforcement machinery brought to bear on him, to say nothing of his disqualification from important rights or privileges, as well as the possibility of criminal sanctions. An interstate employer will be subject to all this as regards his Puerto Rican operations, but not as to his operations in other States.[5]

It was the intention of Congress to create uniformity of law, *Local 174, Teamsters* v. *Lucas Flour Co.,* 369

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[5] A state can neither prohibit nor regulate the processes or procedures of collective bargaining under the federal act. *Local 24 Teamsters* v. *Oliver,* 358 U.S. 283 (1959). The Court said in the Oliver opinion, at p. 297, ". . . We have not here a case of a collective bargaining agreement in conflict with a local health or safety regulation; the conflict here is between the federally sanctioned agreement and state policy which seeks specifically to adjust relationships in the world of commerce. If there is to be this sort of limitation on the arrangements that unions and employers may make with regard to these subjects, pursuant to the collective bargaining provisions of the Wagner and Taft-Hartley Acts, it is for Congress, not the States, to provide it."

U.S. 95, (1962), cf. *Guss* v. *Utah Labor Board,* 353 U.S. 1 (1957), and remedy, *Engineers Ass'n* v. *Sperry Gyroscope Co.,* 148 F. Supp. 521, 522 (SD NY, 1957), affirmed 251 F. 2d 133, cert. den. 356 U.S. 932 (1958); cf. *San Diego Bldg. Trades Council* v. *Garmon,* 359 U.S. 236, 247 (1959); *Weber* v. *Anheuser-Busch,* 348 U.S. 469, 479-480 (1955); *United Construction Workers* v. *Laburnum Construction Corp.,* 347 U.S. 656, 663-665 (1954); *Garner* v. *Teamsters,* 346 U.S. 485, 498 (1953); *Amalgamated Association* v. *Wisconsin Employment Relations Board,* 340 U.S. 383 (1951); *International Union* v. *O'Brien,* 339 U.S. 457 (1951). It can not be seriously argued that Congress contemplated subjecting the enforcement of collective agreements in interstate commerce to disparaging remedies, procedures or forums. Certainly such added burdens to interstate commerce are a "bane" and not a "blessing".

Looking at the total scene, there is nothing in the scheme of the LMRA that requires (or permits) a forum other than the courts to be created to hear and determine, and to investigate and enforce by government action, breach of contract suits. There is no "no man's" land under Section 301 to be filled by state labor boards or state law.

To permit the Puerto Rico statute in question to be applied to interstate commerce would be a retrogression to the "checkerboard jurisdiction", *Retail Clerks* v. *Lion Dry Goods,* 369 U.S. 17, 27 (1962), multiplicity of tribunals, and diversity of procedures and remedies, *Garner* v. *Teamsters,* 346 U.S. 485, 490-491 (1953), which Congress sought to correct. Such action would clearly operate to frustrate the purpose of the federal legislation and would place an undue burden on interstate commerce. *Cooley* v. *Board of Wardens,* 12

How. 299 (1851). Collective agreements are necessarily ". . . so dominated by the sweep of federal statutes that legal relations which they affect must be deemed governed by federal law having its source in those statutes rather than by local law." *Teamsters, Local 20* v. *Morton,* 377 U.S. 252, 261 (1964).

The present matter is a serious one raising fundamental questions in the administration of federal labor law and policy. The Supreme Court of the Commonwealth of Puerto Rico has decided important federal questions in a manner which is contrary to the decisions of this Court, and in disregard of clear Congressional intent.

CONCLUSION

For the foregoing reasons, this Petition for Writ of Certiorari should be granted.

Respectfully submitted.

JUAN R. TORRUELLA DEL VALLE
I.B.M. Building
1605 King's Court
Santruce, Puerto Rico

STUART ROTHMAN
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Attorneys for Petitioner

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APPENDIX A

IN THE SUPREME COURT OF PUERTO RICO

JRT-65-7 Review

EL MUNDO, INC., *Petitioner*

v.

PUERTO RICO LABOR RELATIONS BOARD, *Respondent*

Division composed of Mr. Justice Belaval as Chief Judge of Division, and Associate Justices Messrs. Santana Becerra, Blanco Lugo, and Ramírez Bages.

Judgment

San Juan, Puerto Rico, November 26, 1965.

El Mundo, Inc., has asked us to review a Decision of the Labor Relations Board (D-391) ordering it: (a) to cease and desist from in any manner violating the provisions of a collective agreement entered into with the Puerto Rico Newspaper Guild, Local 225; and (2) to take an affirmative action (a) agreeing to arbitrate the controversy that arose on account of the dismissal of employee Julio César López, pursuant to Article VII of the collective agreement, and (b) to fix in conspicuous places in its premises the notice determined with respect thereto by the Board, which was attached to its Decision.

El Mundo, Inc., challenges said Order (1) because the Labor Relations Board lacks jurisdiction to act in the matter inasmuch as El Mundo is an industry engaged in interstate commerce; (2) because the administrative remedies established in the collective agreement were not exhausted before filing an unfair labor practice charge; and (3) because the conclusion that El Mundo had violated Section 8(1)(f) of the Puerto Rico Labor Relations Act constituted an error.

Petitioner is not correct as to any of the three issues. The charge and the complaint imputed the violation of a

collective agreement as an unfair practice under our Labor Relations Act. We have held that the violation of a collective agreement is not sanctioned as an unfair practice in the Federal Labor Management Relations legislation. The fact that the Federal legislation admits an action for damages for such violation—Section 301, Taft-Hartley Act—and that such action for damages should be handled by the courts, whether Federal or State, does not prevent our Labor Relations Board, as an administrative agency, from taking cognizance under our Act of such violation as an unfair practice. This question has been clearly decided by this Court. *Puerto Rico Telephone Co.* v. *Board,* P.R.R. , decided April 13, 1965; *Puerto Rico Telephone Co.* v. *Labor Relations Board,* 86 P.R.R. ; *Labor Relations Board* v. *I.L.A.,* 73 P.R.R. 568.

The evidence supports the finding of the Official Examiner, adopted by the Board, to the effect that petitioner refused to submit to arbitration the controversy which was already before the Grievance Committee created by the collective agreement. The evidence shows that the Committee did not fail to reach an agreement as to the controversy in itself only, but also as to submission and as to the manner of considering it. The issue concerns a dismissal. The employee and the Union took the necessary steps pursuant to the Agreement to take the matter up to the Grievance Committee. This Committee had to make a decision within 72 hours and, on the contrary, it kept the matter before it, unable to reach an agreement as to anything and without getting to the merits of the matter, from February 20, until March 18, 1964. An arbitrator should have been designated then by mutual agreement, but petitioner objected thereto on the ground that the matter had not yet been considered on its merits by the Grievance Committee (Minutes of March 10, 1964). It can not claim now that the conventional means were not exhausted.

By virtue of the foregoing, the exceptions of El Mundo, Inc., to the aforesaid Decision and Order (D-391) of the

Puerto Rico Labor Relations Board of June 9, 1965, can not stand, and, consequently, the petition is hereby denied.

It was so ordered and decreed by the Court as witnesses the signature of the Chief Justice.

(s) LUIS NEGRÓN FERNÁNDEZ
Chief Justice

I attest:

(s) JOAQUÍN BERRIOS
Acting Secretary

APPENDIX B

COMMONWEALTH OF PUERTO RICO
PUERTO RICO LABOR RELATIONS BOARD

San Juan, Puerto Rico

Case No. CA-2994 D-391

In the Case of

EL MUNDO, INC.
and
PUERTO RICO NEWSPAPER GUILD, LOCAL 225, AFFILIATED TO THE AMERICAN NEWSPAPER GUILD, AFL-CIO

LUIS RIVERA PÉREZ, ESQ.
For the Board

FEDERICO CORDERO, ESQ.
For the Union

JUAN R. TORRUELLA, ESQ.
For the Employer

Before: Miguel A. Velázquez Rivera, Esq.
Official Examiner

Decision and Order

On April 21, 1965, the Official Examiner, Miguel A. Velázquez Rivera, Esq., concluded that the respondent, El Mundo, Inc., had engaged in an unfair labor practice as defined in Article 8(1)(f) of the Puerto Rico Labor Relations Act and, therefore, he advised the Board to issue the corresponding order to correct the unfair labor practice.

The respondent employer filed exceptions to the Report of the Official Examiner.

The Board has considered the decisions of the Official Examiner during the course of the hearing and, finding that no prejudicial error was committed, it hereby affirms them.

The Board has considered the Report of the Official Examiner, which is made a part hereof, the exceptions filed

by the respondent employer, as well as the entire record of the case and it hereby adopts the findings of fact and conclusions of law as well as the recommendations of the Official Examiner with the amendments hereinafter set forth.

The Secretary of the Board shall substitute the Notice to All Our Employees that forms part of the Report of the Official Examiner for the "Notice" that is made a part hereof.

ORDER

On the basis of the foregoing, respondent El Mundo, Inc., is hereby ordered:

1. To cease and desist from:

(a) In any manner whatsoever violating the provisions of the collective agreement it entered into or which it shall hereinafter enter into with the Puerto Rico Newspaper Guild, Local 225, Affiliated to the American Newspaper Guild, AFL-CIO.

2. To take the following affirmative action:

(a) To agree to arbitrate the issue that arose on account of the dismissal of employee Julio César López in the light of the collective agreement in force between the parties, specifically Article VII; and should the arbitrator conclude that when the aforesaid employee was dismissed the respondent did not comply with the contractual provisions, he may order the appropriate remedy.

(b) To fix in prominent places in his business the Notice to All Our Employees that is made a part hereof.

(c) To inform the Chairman of the Board within ten (10) days after receiving this Decision and Order

the steps it has taken to comply herewith. San Juan, Puerto Rico, June 9, 1965.

(s) ANTONIO J. COLORADO
Chairman

(s) LIBERTO RAMOS
Associate Member

NOTICE TO ALL OUR EMPLOYEES

In compliance with a decision and order of the Puerto Rico Labor Relations Board, and in order to effectuate the the public policy of the Puerto Rico Labor Relations Act,

ALL OUR EMPLOYEES ARE HEREBY ADVISED THAT:

WE shall in no way violate the provisions of the collective agreement we entered into or which we shall hereinafter enter into with the Puerto Rico Newspaper Guild, Local 225, Affiliated to the American Newspaper Guild, AFL-CIO.

WE shall agree to arbitrate the controversy that arose on account of the dismissal of employee Julio César López in the light of the collective agreement in force between the parties, Article VII in particular; and should the arbitrator conclude that in dismissing the aforesaid employee respondent did not comply with the contractual provisions, he may order the adequate remedy.

EMPLOYER:

EL MUNDO, INC.

By .....
Representative *Title*

Date:

This NOTICE shall remain fixed in places visible to the employees for a period of not less than sixty (60) consecutive days and it shall not be altered, modified, or covered in any manner whatsoever.

COMMONWEALTH OF PUERTO RICO
PUERTO RICO LABOR RELATIONS BOARD

San Juan, Puerto Rico

Case No. CA-2994

In the Case of

EL MUNDO, INC.
and
PUERTO RICO NEWSPAPER GUILD, LOCAL 225, AFFILIATED TO THE AMERICAN NEWSPAPER GUILD, AFL-CIO

LUIS RIVERA PÉREZ, ESQ.
For the Board

FEDERICO CORDERO, ESQ.
For the Union

JUAN R. TORRUELLA, ESQ.
For the Employer

Before: Miguel A. Velázquez Rivera, Esq.
Official Examiner

Report of the Official Examiner

The parties hereto, represented by their respective counsel, appeared at the hearing of the above-entitled case. Complainant Julio César López, as well as Luis Montañez, Jr., Ramón Rodríguez, and Frank Romero gave oral testimony. Both parties introduced abundant documentary evidence to the consideration of the undersigned.

At the commencement of the hearing the employer's legal representative raised certain issues of law in support of his motion to dismiss the complaint. In the first place, he alleged that the Puerto Rico Labor Relations Board lacked jurisdiction to act upon the issue on the ground that respondent was an employer engaged in interstate commerce. He contended that, consequently, it was the National Labor Relations Board which had legal au-

thority to take cognizance of any grievances arising between the respondent enterprise and the representative of its employees. The undersigned dismissed the issue. The juridical doctrine in force in our country accepts the authority and jurisdiction of the Puerto Rico Labor Relations Board to issue remedial decisions in cases of collective agreement violations notwithstanding that the employers in question are engaged in interstate commerce. *Puerto Rico Telephone Co.* v. *Board,* decided April 13, 1965.

Mr. Torruella claimed, in addition, that the allegations of the complaint charged an unfair labor practice in that the employer refused to bargain collectively with its employees' representative. Therefore, the Puerto Rico Labor Relations Board is barred from acting and issuing any order in conflict with the hierarchical authority of the National Board in this aspect. The official Examiner concludes that the issue raised lacks merit. As hereinafter noted, it is not a case of correcting an unfair labor practice consisting in the refusal to bargain with the representative of its employees, but, rather, of a violation of the provisions of a collective agreement entered into by the parties.

Finally, the employer alleged that the complainant Union had not exhausted the administrative remedies prescribed by the collective agreement before resorting to the Board to defend its rights. The facts hereinafter set forth show that said allegation finds no support in the evidence.

Based on the entire record of the case and on his personal observation of the witnesses, the Official Examiner makes the following

Findings of Fact

I.—*The Respondent*

El Mundo, Inc., is a corporation which utilizes the services of employees in the editing, printing, publication and distribution of the newspaper El Mundo throughout the

country. In these activities it utilizes the services of employees.

II.—*The Labor Organization*

The Puerto Rico Newspaper Guild, Local 225, Affiliated to the American Newspaper Guild, AFL-CIO, is an organization admitting in its membership employees of the respondent corporation and its purposes are to deal with employers concerning grievances and other conditions of employment.

III.—*The Facts*

Sometime on September 26, 1962, respondent El Mundo, Inc., and the Puerto Rico Newspaper Guild, Local 225, Affiliated to the American Newspaper Guild, AFL-CIO, entered into a collective labor agreement to regulate employer-employee relations in the enterprise during a two-year period of time.

The creation of a procedure to handle and settle any grievances arising during the effectiveness of the agreement was an express condition thereof.

Thus, Articles VI and VII of the agreement provide as follows:

"VI. *Grievance Procedure*

"A. Any complaint, grievance, or claim, except wage claims under existing laws, which may arise between the Guild, the Publisher, or between any employee or employees, must be handled pursuant to the following procedure:

"*First:* The employee directly or through the Guild, within 5 days after the action causing the complaint was taken—if it arises as a result of a disciplinary action—and within 30 days if it arises due to any other reason, shall submit same to the supervisor or department head, who must settle same within the 48

hours following the time it was submitted, excluding Saturdays.

"*Second:* The Guild shall be notified of the action taken by the Management in the 1st. step. If the solution is not satisfactory, the employee or the Guild or both, within the five days following the decision in the first step, may submit it in writing to the General Manager or his representative, who must settle it within 72 hours after it was submitted to him.

"*Third:* If it is not settled in the second step, the employee and or the representative of the Guild, or both within 72 hours after the decision made in the second step, shall take the case before the Grievance Committee composed of two representatives designated by the Guild and two representatives designated by the General Manager, or his representative, who if not able to reach an agreement within 72 hours after the case was submitted to them, shall designate an arbitrator by mutual agreement, and if no agreement is reached, they shall request the appointment of an arbitrator from the American Arbitrator Association, the parties thus being subject to its rules and regulations. The expenses incurred shall be paid by the Guild and the Publisher in equal shares. From this step on, the Guild and the Publisher may be represented by legal counsel.

"*Fourth:* The third member or arbitrator shall set the date, place and time to hear the case submitted to him, who will limit his award to this Agreement and to the submission of the case, and whose decision shall be final and binding on all the parties involved, provided it conforms to the law, to decisions of the competent Courts and its proceedings (according to law).

"B. Any case initiated by the Publisher under this Article VI may begin with the Third step mentioned

above and then follow, as far as possible, the procedure herein established.

"C. The period of time established in this Article may be extended only by mutual agreement of the parties. In like manner, a court reporter may be used by mutual agreement.

"VII. *Section 1:* There shall be no dismissals solely as a result of putting this contract into effect.

"*Section 2:* Any employee dismissed for any reason other than gross misconduct, gross insubordination or gross neglect of duty shall receive advance written notice as follows:

"(1) Up to six months employment—one week

"(2) Six months to three years—two weeks

"(3) Three years to five years—three weeks

"(4) Over five years—four weeks

"The period of employment shall be computed on the basis of continuous service.

"*Section 3:* If a dismissal is protested it shall be handled in conformity with the grievance procedure in Article VI.

"*Section 4:* Dismissals to reduce the force for purposes of economy will be made in order of seniority and type of work. The employees dismissed to reduce the force under this section will be placed in preferential hiring list for one year, and shall be rehired in the inverse order of their dismissal when a vacancy in the type of work occurs. Such dismissed employees will be notified when there is such a vacancy at their last known mailing address and will be given one week (7 days) provided notification is made by telegram or telephone or messenger and two weeks if notified via regular mail.

"*Section 5:* A—Any employee dismissed for any reason other than gross misconduct or gross neglect of duty or gross insubordination, shall be entitled to the following:

"(a) after six months and up to one year continuous service—one week of pay.

"(b) between 12 months and 18 months of continuous service—two (2) weeks of pay.

"(c) between 18 months and 30 months of continuous service—three (3) weeks of pay.

"(d) between 30 and 36 months of continuous service—four (4) weeks of pay.

"(e) between 36 and 48 months of continuous service—five (5) weeks of pay.

"(f) after 4 years of continuous service—six (6) weeks of pay.

"B. Payment of dismissal compensation under this Article is without prejudice to any pay to which a dismissed employee may be entitled under the provisions of Puerto Rico Labor Laws.

"C. A dismissed employee will be entitled to accumulated vacations."

Complainant Julio César López began to work in newspaper El Mundo in the year 1955. The work initially assigned to him consisted in re-writing the information received in the newspaper offices either by telephone or in drafts originally written by the editors. He worked continuously in the enterprise until February 1964, at which time he held the position of copy reader.

On February 4, 1964, complainant reported to work and discharged his regular duties until approximately 9 p.m., at which time he was asked to appear before

the head of the industrial relations department. There, he was given a letter informing him that the employer had reached the conclusion that it was absolutely impossible to continue utilizing his services. As grounds for the dismissal the letter stated that for some time complainant had become a political-party pressure agent in the enterprise and that he had expressed himself against the impartiality of the newspaper.[1]

On February 6, 1964, complainant Julio César López addressed a written communication to his immediate supervisors protesting against his dismissal. The President of the Union delivered the letter to the executives of the enterprise. On February 10, 1964, the Director of the

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[1] The letter reads as follows:

"We have evaluated the history of your behaviour In the Editing Department and we have reached the conclusion that it is absolutely impossible to continue utilizing your services.

"For some time you have become a political-party pressure and instigation agent among your editing fellow workers, especially those of the Executive Desk to which you are assigned.

"In addition, you have in many occasions made remarks and statements in your department that are prejudicial to the independence and impartiality of this newspaper. You have also made accusations of a political nature tending to weaken our newspaper standards.

"You have, furthermore, assumed an attitude of indifference towards your work, all of which, as a whole, renders you unfit to continue being assigned to the Editing Department, let alone in the quasi-executive position you have been discharging.

"Your services in this newspaper are terminated, effective immediately. We attach hereto a check in the amount of $128.18 to cover 56 hours of accumulated leave to date.

"Very truly yours,

"(s) Pablo Vargas Badillo
Director"

newspaper El Mundo answered the letter sent by the complainant informing him that the enterprises reaffirmed the action previously taken. The Union was not satisfied with the solution of the matter and by means of a letter dated February 14, 1964, it addressed the General Manager of the Company and asked for the immediate reinstatement of the complainant employee and for compliance with the provisions of the agreement. Three days later the General Manager of the corporation answered the Union's request refusing reinstatement. On February 20, 1964, the Union asked the Grievance Committee established by the collective agreement to take jurisdiction of the dispute and to make a determination with regard to the justification of the dismissal of complainant Julio César López.

The meetings of the Grievance Committee began March 2, 1964, and extended over the first two weeks of that month inasmuch as, whenever they met, the parties were unable to reach an agreement, not even concerning the rules of procedure to regulate the discussion of the issue. On March 18, 1964, it became evident that no agreement was possible. The representatives of the Union asked for submission of the issue to arbitration. The representatives of the employer alleged that the controversy should not be submitted to arbitration for the reason that the Grievance Committee had not yet heard it on its merits. Hence, the Union proceeded to file a charge with the Board. Consequently, a complaint was issued charging that the respondent corporation had violated the provisions of the collective labor agreement in force.

IV. *The Alleged Unfair Labor Practice*

Shortly after examining the merits of the issue, we find that the express terms of the agreement afford the key to settle the problem according to law. Notice, in the first place, that the collective labor agreement is a precision model with regard to the steps that must be followed to settle any grievance. We might say that the procedure

established by the agreement was designed precisely to cover situations such as the one involved here. Let us see:

The first contractual requisite, insofar as the operation of the grievance procedure is concerned, consists in the concerned employee's submitting a complaint to his immediate supervisor. The evidence leaves no room to doubt that this requirement was complied with when complainant Julio César López sent the letter of February 6, 1964, protesting against his dismissal. The letter of February 10, 1964, addressed by the Directors of the newspaper to the complaintant and to the Union was nothing but compliance on the part of the employer with the second step of the procedure. The preliminary procedure was completed February 14, 1964, when the President of the Union submitted the complaint to the General Manager of the enterprise and three days later the latter reaffirmed the employer's position.

At this stage of the proceedings, the only thing left to do was for one of the parties to submit the controversy to the Grievance Committee composed of two representatives of the employer and two of the labor organization. It is clear that this procedural requirement was complied with on February 20, 1964, when the Union submitted the question to the appropriate body created by the agreement.

Let us examine forthwith whether or not an agreement was reached by the Grievance Committee within 72 hours after the controversy had been submitted to it. A reading of the contractual provisions shall convince any unprejudiced person that the agreement requires nothing else. The contract does not stipulate that the lack of agreement must be based on questions of procedure or of a substantive nature. Nor does it require that the lack of agreement be the result of unilateral action. The letter of the agreement is altogether clear. The only requirement is that 72 hours must elapse from the time the question is submitted to the Grievance Committee and no agreement is reached, to ini-

tiate the next step. There is no other alternative. At this point the controversy must be submitted to an arbitrator.

We therefore conclude that the employer's position alleging that, because no agreement had been reached concerning the rules of procedure, the designation of an arbitrator did not lie, was untenable. To admit as valid the employer's position in this aspect would be tantamount to giving employers the right to veto whenever submission to arbitration is justified. Any dispute regarding questions of procedure would be enough to obviate the arbitrator's intervention. We can not construe the collective agreement in such a way as to produce those results. We conclude, hence, that when the respondent enterprise refused to submit the controversy to an arbitrator, it violated the provisions of the collective labor agreement entered into with the Union.

On the basis of the foregoing findings of facts, the undersigned reaches the following conclusions of law:

I.—*The Respondent*

El Mundo, Inc., is an employer as defined in the Puerto Rico Labor Relations Act.

II.—*The Labor Organization*

The Union, Puerto Rico Newspaper Guild, Local 225, Affiliated to the American Newspaper Guild, AFL-CIO, is a labor organization as defined in the Puerto Rico Labor Relations Act.

III.—*The Unfair Labor Practice*

Having concluded that the respondent employer violated the provisions of the collective agreement entered into with the Union, we conclude that it engaged in an unfair labor practice and, consequently, that it violated Article 8(1)(f) of the Act.

IV.—*The Remedy*

Even as we recommend a way to correct the unfair practice in which the employer engaged, we deem it necessary to clarify that we shall advise the Board to issue an order directing the employer to agree to submit to an arbitrator the controversy that arose on account of the dismissal of employee Julio César López. It is necessary, however, in view of the provisions of Section 5 of Article VII of the agreement, that the order to be issued by the Board shall specifically set forth, not only that the agreement requires the parties to agree to submit to the arbitrator the question of whether or not the dismissal of Julio César López was justified, but also that the arbitrator shall determine whether the grounds for the dismissal constituted gross misconduct, gross neglect, or gross insubordination.

RECOMMENDATIONS

On the basis of the preceding findings of fact and conclusions of law the undersigned Official Examiner advises the Board to order employer El Mundo, Inc., to cease and desist from violating the collective agreement it entered into or which it shall enter into with the Puerto Rico Newspaper Guild, Local 225, Affiliated to the American Newspaper Guild, AFL-CIO, to affix the corresponding Notices in the usual places, and to take the affirmative action contained herein.

San Juan, Puerto Rico, April 21, 1965.

(s) MIGUEL A. VELÁZQUEZ RIVERA
Official Examiner

APPENDIX C

Statutes Involved

Labor Management Relations Act of 1947, Section 301 (a) (61 Stat. 156, 29 U.S.C. § 185(a)):

> "(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in the controversy or without regard to the citizenship of the parties."

Section 2(7), (61 Stat. 137(7), 29 U.S.C. 152(7)):

> "The term 'affecting commerce' means in commerce or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce."

Section 2(9), (61 Stat. 137(9), 29 U.S.C. 152(9)):

> "The term 'labor dispute' includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee."

The Puerto Rico Labor Relations Act, 29 L.P.R.A. 61-76:

> "§ 61. Short Title
>
> This subchapter shall be known and may be cited and referred to as the "Puerto Rico Labor Relations Act."—May 8, 1945, No. 130, p. 406, § 18, eff. May 8, 1945.
>
> § 62. Declaration of public policy
>
> The public policy of the Government of Puerto Rico as to employment relations and collective bargaining is declared to be as follows:

(1) It is a fundamental necessity of the people of Puerto Rico to develop its production to the maximum in order to establish the highest possible living standards for the ever growing population; it is the obligation of the Government of Puerto Rico to adopt such measures as may be conducive to the maximum development of this production and remove the threat that a day might come when, with the continuous increase in the population and the impossibility of maintaining an equivalent increase in production, the people must confront, a hopeless catastrophe; and it is the aim of the Government to develop and maintain such production through the comprehension and education of all the elements composing the people as regards the fundamental necessity of raising production to the limit and of distributing this production as equitably as may be possible; and it is likewise the purpose of the Government to develop in practice the principle of collective bargaining, in such a manner that the basic problem of the necessity for maximum production can be solved.

(2) Industrial peace, adequate and regular salaries for the employees, and uninterrupted production of goods and services by means of collective bargaining, are essential factors for the economic development of Puerto Rico. The achievement of these objectives depends to a large extent upon fair, friendly and mutually satisfactory relations between employers and employees, and upon the availability of adequate means for the peaceful solution of employer-employee controversies.

(3) By means of collective bargaining, term and conditions of employment are to be established. For the purposes of such bargaining employers and employees shall have the right of forming organizations of their own choosing.

(4) It is the policy of the Government to eliminate the causes of certain labor disputes, by developing the practices and proceedings of collective bargaining and by establishing an adequate, efficient, and impartial tribunal which will carry out this policy.

(5) All existing collective bargaining contracts, as well as those hereafter executed, are hereby declared

to be instruments for the promotion of the public policy of the Government of Puerto Rico in its efforts to develop production to the maximum; and it is declared that as such they are vested with a public interest. The exercise of the rights and the performance of the obligations by the parties to such collective bargaining contracts are therefore subject to such reasonable regulations as may be necessary to effectuate the public policies of this subchapter. May 8, 1945, No. 130, p. 406, § 1; Mar. 7, 1946, No. 6, p. 18, § 1, eff. Mar. 7, 1946.

§ 63. Definitions

When used in this subchapter:

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy or judicial administrator.

(2) The term "employer" shall include executives, supervisors and any person who carries on activities of an executive nature directly or indirectly in the interest of an employer, but shall not include, (except for corporate instrumentalities or the Government of Puerto Rico as hereinafter defined) the Government or any political subdivision of the same; Provided, That it shall also include any individual, association or organization intervening in behalf of the employer in any labor dispute or collective bargaining.

(3) The term "employee" shall include any employee and shall not be limited to employees of a particular employer, unless the Act expressly provides to the contrary; and shall include any individual whose work has ceased as a consequence of or in connection with any labor dispute, or because of any unfair labor practice, but shall not include any person employed in the domestic service in the home of any family or person, or any person employed by his parents or spouse. The term shall not include executives or supervisors.

(4) The term "representative" shall be limited to labor organizations, as hereinafter defined, not estab-

lished, maintained or aided by any unfair labor practice prohibited by this subchapter.

(5) The term "unfair labor practice" means any unfair labor practice as defined in section 69 of this title.

(6) The term "labor dispute" includes any controversy concerning terms, tenure, or conditions of employment, or concerning the organization or representation of employees, or concerning the negotiation, fixing, maintenance or change of or efforts to agree upon terms and conditions of employment, whether or not the disputants stand in the proximate relation of employer and employee.

(7) The term "all-union agreement" shall mean an agreement between an employer and the representative of his employees in a collective bargaining unit whereby it is required as a condition of employment, that all the employees in such unit be members of a single labor organization.

(8) The term "maintenance of membership agreement" shall mean the agreement between an employer and the representatives of his employees in a collective bargaining unit whereby it is required as a condition of employment of all the employees who are members of the union at the time of the execution of the agreement or at the other times thereafter, and under such other conditions as may be specified in the agreement, that they maintain themselves in good standing as members of the union during the life of the contract.

(9) The term "Board" refers to the Puerto Rico Labor Relations Board created by section 64 of this title.

(10) The term "labor organization" means any kind of organization, or any agency or committee representing employees or any group of employees acting in concert, or any plan in which employees participate, which exists for the purpose in whole or in part of dealing with an employer concerning grievances, disputes, wages, rates of pay, hours of work and/or conditions of labor.

(11) The term "corporate instrumentalities" refers to the following corporations which have properties belonging to or are controlled by the Government of Puerto Rico: The Land Authority, the Agricultural Company, the Development Bank, the Water Resources Authority, the Puerto Rico Development Company (Industrial Development Company), the Transportation Authority, the Communications Authority, and the subsidiaries of such corporations, and shall also include such similar enterprises and their subsidiaries as may be established in the future, as well as such other government agencies as are engaged or may hereafter engage in lucrative businesses or activities for pecuniary profit.

(12) If the technical office, or any other employees of the Puerto Rico Aqueduct and Sewer Authority should at the request of the Board of Directors of said Puerto Rico Aqueduct and Sewer Authority and with the approval of the Personnel Director, be included in the Competitive Service, said Puerto Rico Aqueduct and Sewer Authority shall, with regard to the remaining employees and workmen thereof, and for the purposes of paragraphs 2 and 11 of this section, be considered a corporate instrumentality of the Government of Puerto Rico, and the employees and workmen not included in the Competitive Service shall be entitled to the benefits of this subchapter.—May 8, 1945, No. 130, p. 406, § 2; Mar. 7, 1946, No. 6, p. 18, § 1; July 16, 1947, No. 31, p. 126, § 1; May 3, 1949, No. 163, p. 430, eff. May 3, 1949.

§ 64. Labor Relations Board; Chairman and Members; Rights and duties

(a) There is hereby created in the Department of Labor of Puerto Rico Labor Relations Board composed of a chairman and two associate members, appointed by the Governor by and with the advice and consent of the Senate of Puerto Rico for a term of four (4) years. The Governor may remove any member of the Board, upon notice and hearing, for negligence or malfeasance in the performance of his duties.

(b) The Chairman of the Board shall receive the salary annually fixed in the General Appropriations

Act, and the associate members shall receive a per diem of twenty (20) dollars for every day or part thereof that they devote to the work of the Board, up to a miximum of two thousand (2,000) dollars a year each.

(c) The Chairman shall be the executive officer of the Board and shall devote all of his time to the duties of his office as chairman, and during his uncumbency he shall not engage in any private business, or in the practice of any profesison or trade. The Chairman shall appoint the necessary personnel for the performance of the functions and duties established by this subchapter.

(d) A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board. After all the members of the Board are appointed, two (2) members thereof shall constitute a quorum. Business of a purely administrative nature shall be attended to by the Chairman.

(e) The central office of the Board shall be in the city of San Juan, but the Board may exercise any or all of its powers in any place in Puerto Rico. A member of the Board taking part in any conference, investigation, hearing or election shall not be prevented from subsequently taking part in a decision of the Board in the same matter or in any other matter in which the parties or one of them may be affected.

(f) The Board shall have authority to make, amend, and repeal such rules and regulations as may be necessary to carry out the provisions of this subchapter. Such rules and regulations shall have the force of law upon their due promulgation.

(g) The necessary appropriations to cover salaries, per diems, traveling expenses and other disbursements of the Board and its personnel shall be included in the General Budget of Expenses of the Government of Puerto Rico.

(h) The Board shall annually render to the Governor and to the Legislature of Puerto Rico a report of its activities during the preceding year, including data

and statistics and such recommendations as it may deem advisable.—May 8, 1945, No. 130, p. 406, § 3; Mar. 7, 1946, No. 6, p. 18, § 1; May 14, 1947, No. 458, p. 994, § 1; Apr. 18, 1950, No. 49, p. 128, § 1, eff. April 18, 1950.

§ 65. Right of employees to organize and bargain

Employees have, among others the right of self-organization; to form, join or assist labor organizations; to bargain collectively through representatives of their own choosing; and to engage in concerted activities for the purpose of bargaining collectively or for other mutual aid and protection.—May 8, 1945, No. 130, p. 406, § 4, Mar. 7, 1946, No. 6, p. 18, § 1, eff. Mar. 7, 1946.

§ 66. Representatives and elections

(1) Representatives designated or elected for the purpose of collective bargaining by a majority of the employees in a unit appropriate for such purpose shall be the exclusive representative of all the employees in such collective bargaining unit; Provided, That any individual employee shall have the right at any time to present individual grievances to his employer.

(2) In order to insure to the employees the full enjoyment of the rights of self-organization and collective bargaining, and otherwise to carry out the purpose of this subchapter, the Board shall decide in each case the appropriate unit for the purposes of collective bargaining.

(3) Whenever a question concerning representation of employees arises, the Board may investigate and resolve the question. The Board may investigate and resolve such question by appropriate public hearing on due notice, or by secret election, or by both, or by any other appropriate method. Provided, That whenever one of the unions or labor groups in controversy concerning representation of employees does not agree with the decision of the Board, in the absence of an election, and its claim is supported by twenty per cent of the employees in the unit for collective bargaining, the Board shall immediately decree an election among the employees in order to decide the question. In every

such election, the ballot shall be so prepared as to permit a vote against representation by anyone named on the ballot. The Board's findings, election procedure, resolution of the question concerning representation, unit determination, and certification of the results of any election so held, shall be final, and shall be subject to judicial review only in the manner hereinafter provided by subsection (4) of this section.

(4) Whenever an order of the Board made pursuant to section 70 of this title is based in whole or in part upon facts certified following an investigation or public hearing pursuant to subsection (3) of this section, and there is a petition for the enforcement and for the review of such order, the certification and the record of the investigation or hearing conducted pursuant to subsection (3) of this section, shall be included in the transcript of the entire record required to be filed under section 70 of this title, and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.—May 8, 1945, No. 130, p. 406, § 5, Mar. 7, 1946, No. 6, p. 18, § 1, eff. Mar. 7, 1946.

§ 67. Labor organization information and contracts filed with Board

(a) All labor organizations and employers' association shall file with the Board a statement containing the official name and post office address of the organization. The Board may, in the exercise of its discretion, refuse to hear any labor organization that fails to comply with the provisions of this section in any proceeding being held under this subchapter.

(b) Certified copies of all collective bargaining contracts between employers and labor organizations, and any renewals, or modifications that shall be made of the same, shall be filed with the Board by employers and labor organizations. The Board, in the exercise of its discretion may refuse to hear in any proceeding conducted under this subchapter any employer or labor organization who may be a party to a collective bargaining contract and who has failed to comply with

the provisions of this section.—May 8, 1945, No. 130, p. 406, § 6; Mar. 7, 1946, No. 6 p. 18, § 1, eff. Mar. 7, 1946.

§ 68. Unfair labor practices—Powers of Board to Investigate

(a) The Board shall have power in the manner hereinafter provided, to prevent any person from engaging in any of the unfair labor practices enumerated in section 69 of this title. This power shall be exclusive and shall not be affected by any other method of adjustment or prevention.

(b) The Board shall have the power to conduct a preliminary investigation of all the charges and petitions filed in accordance with the provisions of sections 66 and 70 of this title, for the purpose of determining whether or not further proceedings shall be instituted and hearings held. If in the opinion of the Board, the charge or petition filed justifies the institution of further proceedings, the Board may proceed in its own name as is provided in section 66 or 70 of this title, as the case may be.

(c) For the purpose of all the hearings and investigations which in the opinion of the Board may be necessary and proper for the exercise of the powers granted to it by this subchapter, the Board or its agents or agencies duly authorized shall, at all reasonable times, for the purpose of examining and with the right to copy the same, have access to any evidence of any person under investigation or against whom proceedings have been instituted, which evidence is related to any matter under investigation by the Board or which is in controversy. Any member of the Board shall have the power to issue subpoenas requiring the appearance and statements of witnesses and the production of any evidence related to any matter under investigation or which is in controversy before the Board or before one of its members, agents or agencies that is holding a hearing or conducting an investigation. Any member of the Board or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine wit-

nesses and receive evidence. The said appearance of witnesses and production of evidence may be required from any place in Puerto Rico, to have effect in any place in Puerto Rico designated for the holding of hearings and investigations, according to the provisions of this subchapter.

(d) In the case of a failure or refusal to obey a subpoena issued against any person by the Board or one of its members, any part of the Superior Court of Puerto Rico within whose jurisdiction such person guilty or such failure or refusal may be found, resides or carries on a business shall, upon petition of the Board, have jurisdiction to issue an order against such person requiring him to appear before the Board or before one of its members, agent or agency to produce evidence if he shall be so ordered or to testify concerning the matter under investigation or being heard; and any failure to obey such order of the court may be punished by the same as a contempt of court.

(e) No person shall be excused from appearing and testifying, or producing books, files, correspondence, documents or other evidence in obedience to the subpoena issued by the Board or any of its members, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to penalty or forfeiture; but no individual may be prosecuted or be subject to penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may be forced, after claiming his privilege against self-incrimination, to testify or produce evidence, except that such individual who so testifies shall not be exempt from prosecution or punishment for perjury committed in so testifying.

(f) Complaints, orders, subpoenas, or other documents of the Board, of any of its members, agent or agency may be served personally or by registered mail or by telegraph or by leaving a copy of the same in the principal office or place of business of the person, employer, or labor organization to be notified. An affidavit of the individual serving the same in which shall be stated the manner of service shall be proof of service and the return receipt from the postal

or telegraph office, as stated above, shall also be proof of service. The witnesses summoned before the Board or before any of its members, agent or agency shall receive the same fees and mileage as are paid to witnesses in the courts of Puerto Rico, and the witnesses whose testimony is taken out of the hearing shall have the right to the same fees that are paid for similar services in the courts of Puerto Rico.

(g) All the process of any court in which a petition may be filed in accordance with this subchapter, may be served in the part of the court in which the person to be served resides or may be found.

(h) The various departments and agencies of the Government shall furnish to the Board, upon request from the same, all the records, documents, and reports they may have in connection with any matter pending before the Board.

(i) The Board is empowered to adopt an official seal. There shall be a presumption of regularity of all orders, communications, subpoenas, decisions, and certifications of the Board which, when issued over said seal, shall be recognized as official documents of the Board.—May 8, 1945, No. 130, p. 406, § 7; Mar. 7, 1946, No. 6, p. 18, § 1; July 24, 1952, No. 11, p. 30, eff. July 25, 1952.

§ 69.—Defined and enumerated

(1) It shall be an unfair labor practice for an employer acting individually or in concert with others:

(a) To interfere with, restrain or exercise coercion upon, or to attempt to interfere with, restrain or exercise coercion upon his employees in the exercise of the rights guaranteed in section 65 of this title.

(b) To initiate, create, establish, dominate, interfere with or attempt to initiate, create, establish, dominate or interfere with the formation or administration of any labor organization, or to contribute financial or other support to the same; Provided, That an employer shall not be prohibited from deducting any sum of money from the salary, earnings or income of an employee for the payment of dues to a labor organiza-

tion when such deduction is required by the terms of a collective bargaining contract entered into between the employer and a labor organization not established, maintained or supported by any action defined in this subchapter as an unfair labor practice, if such labor organization represents a majority of his employees as provided for by section 66(1) of this title in an appropriate unit covered by such contract.

(c) To encourage, discourage or attempt to encourage or discourage membership in any labor organization by discrimination in regard to hiring, firing, or in connection with the tenure or other terms or conditions of employment, including a lockout; Provided, that nothing herein contained prohibits an employer from making an all-union shop contract or a maintenance of membership agreement with any labor organization that has not been established, maintained or assisted by any action defined in this subchapter as an unfair labor practice, if such labor organization represents a majority of the employees in an appropriate unit with authority for collective bargaining.

(d) To refuse to bargain collectively with the representatives of a majority of his employees in a unit appropriate for collective bargaining, subject to the provisions of section 66 of this title.

(e) To bargain or make a collective bargaining contract with a representative for the purpose of collective bargaining who does not represent a majority of the employees in a unit appropriate for collective bargaining.

(f) To violate the terms of a collective bargaining contract, including an agreement to accept an arbitration award whether the same is or is not included in a collective bargaining contract; Provided, however, That the Board may dismiss any charge in which there is alleged a violation of this subsection, if the union that is party to the contract is guilty of a current breach of the contract or has not complied with an order of the Board concerning any unfair labor practice as provided by this subchapter.

(g) To fail to maintain a neutral position before or during any election for the purpose of determining

the representative for collective bargaining of his employees, by interfering with or attempting to influence his employees by making such statements or remarks, and engaging in such conduct as tend to coerce, restrain, discourage or hinder the free exercise by his employees of their right to select a representative for the purpose of collective bargaining according to the provisions of this subchapter.

(h) To discharge or otherwise discriminate against an employee because he has filed charges or given information or testimony under the provisions of this subchapter.

(i) Fail to employ or reinstate to his former position, or, in the event of its nonexistence, to a substantially equivalent position, an employee who has been discharged in violation of subsection (2)(b) of this section.

(j) To discharge or otherwise discriminate against a supervisor because he refuses to assist, participate in or in any other manner engage, directly or indirectly, in activities on behalf of an employer in the commission of an unfair labor practice as defined in this subchapter.

(2) It shall be an unfair labor practice for a labor organization acting individually or in concert with others:

(a) To violate the terms of a collective bargaining contract including an agreement to accept an arbitration award whether the same is or is not included in a collective bargaining contract; Provided, however, That the Board may dismiss any charge in which there is alleged a violation of this subsection if the employer that is a party to the contract is guilty either of a current breach of the contract or has not complied with an order of the Board concerning any unfair labor practice as provided by this subchapter.

(b) To unjustifiably exclude or suspend from the membership of a labor organization any employee in a collective bargaining unit on whose behalf the labor organization has executed an all-union or maintenance of membership agreement. For violation of this sub-

section, the Board may, in its discretion, order the temporary suspension or the permanent termination of such clause of the collective bargaining contract that requires all the employees in said bargaining unit, as a condition of employment, to belong to one sole labor organization or that the members of said organization maintain themselves in good standing as members of the same, during the life of the contract.—May 8, 1945, No. 130, p. 406, § 8; Mar. 7, 1946, No. 6, p. 18, § 1, eff. Mar. 7, 1946.

§ 70.—Power of Board to prevent; Supreme Court proceedings

(1) Charges of the existence of an unfair labor practice may be submitted to the Board for its action in the manner and for the purposes provided by this subchapter.

(a) Whenever it is charged that any person, employer, or labor organization has engaged in or is engaging in any unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have the power to investigate such charge and cause to be served upon such person, employer or labor organization a complaint in the name of the Board stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five (5) days after service of said complaint. Any such complaint may be amended by the member of the Board, agent or agency conducting the hearing, or by the Board, in its discretion, at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the time and place fixed in the notice of hearing. All allegations of any complaint so issued which are not denied shall be deemed admitted and the Board may thereupon make findings of fact and conclusions of law with respect to such undenied portions of the complaint. In the discretion of the member of the Board, agent, or the agency conducting the hearing, or of the Board, any

other person may be allowed to intervene and to present testimony in said proceedings. In any such proceedings the rules of evidence prevailing in the courts of law or equity need not be controlling.

(b) The testimony taken by said member, agent or agency, or by the Board, in the hearings shall be reduced to writing and shall be filed with evidence or hear further argument. If according to all testimony taken, the Board is of the opinion that any person, employer or labor organization named in the complaint has in or is engaging in an unfair labor practice, then the Board shall make its findings of fact and of law and issue its order, and shall cause the same to be served upon such person, employer or labor organization, requiring it to cease and desist from said unfair labor practice and to take such affirmative action as shall effectuate the purpose of this subchapter, including, but not limited to, reinstatement of employees with or without back pay, the posting or transmittal by mail of appropriate notices, and the termination of collective bargaining contracts in whole or in part; or make any other order against such person, employer, party, or labor organizaton, that shall effectuate the purposes of this subchapter. The order may likewise require such person, employer or labor organization to submit a report from time to time showing the extent to which he has complied with the same. If, according to the testimony taken, the Board is of the opinion that none of the persons mentioned in the complaint has engaged in or is engaging in an unfair labor practice, then the Board shall make its findings of fact and shall issue an order dismissing the complaint.

(2)(a) The Board may petition the Supreme Court of Puerto Rico, or, if the Supreme Court is in vacation, the judge siting in vacation, for the enforcement of the order of the Board, and may also ask the said Court to make any other appropriate temporary relief or restraining orders, and it shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered, and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon the person to

whom the order is addressed, and thereupon shall have jurisdiction of the proceedings and of the question to be determined therein, and it shall have power to grant such temporary relief or restraining order as it deems just and proper, and shall make and enter upon the pleadings, testimony and proceedings set forth in the transcript, a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part, the order of the Board. No objection that has not been raised before the Board or any of its members, agent or agency, shall be considered by the court, unless the failure or neglect to raise such objection be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing held before the Board or any of its members, agent, or agency, the court may order such additional evidence to be taken before the Board or any of its members, agent, or agency and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the Supreme Court of Puerto Rico shall be exclusive and its judgment shall be final, except that the same shall be subject to review by the full membership of the Supreme Court of Puerto Rico if application was made to a judge of said court sitting in vacation as hereinabove provided.

(b) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such orders in the Supreme Court of Puerto Rico, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and

thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceedings certified by the Board, including the pleadings and testimony upon which the order complained of was entered, and the findings and order of the Board. The Board shall issue the certified transcript of the proceedings free of all charge or fees when the petitioner is insolvent. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection 2(a) of this section, and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying and enforcing as modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by the evidence, shall in like manner be conclusive.

(c) In order to promote collective bargaining, the Board may, in the exercise of its discretion, aid in the enforcement of arbitration awards issued by competent arbitration agencies, whether designated according to the terms of any collective bargaining contract executed between an employer and a labor organization or by virtue of any agreement signed by a labor organization and an employer. Upon the issuance of an arbitration award, the Board may give advice at the request of any party to such award or may, if requested to do so, file in the name of the party so requesting, the proper judicial proceeding in the Supreme Court of Puerto Rico to enforce such award or arbitration.

(d) The commencement of proceedings under subsection 2(a) or 2(b) of this section shall not, unless specifically so ordered by the court, operate as a stay of the Board's order.

(e) Until a transcription of the record of a case is filed in court, the Board may at any time, upon reasonable notice and in the manner it deems proper, modify or revoke in whole or in part any findings made or order issued by it.

(f) Petitions filed in the Supreme Court of Puerto Rico under this subchapter to enforce the orders of the Board, shall have preference over any civil cause of a different nature pending before said court, and shall be heard expeditiously and if possible within ten days after the filing of the petition.

(g) A substantial compliance with the procedure provided for by this subchapter shall be sufficient to give effect to the orders of the Board, and they shall not be declared inapplicable, illegal or void for any omission of a technical nature.—May 8, 1945, No. 130, p. 406, § 9; Mar. 7, 1946, No. 6, 18, § 1, eff. Mar. 7, 1946.

§ 71. Secretary of Justice and Prosecuting Attorneys as attorneys for Board

Upon request of the Board the Secretary of Justice or the Prosecuting Attorney of the part of the court in which any action is filed, shall appear and act as attorney for the Board in any proceeding either in the Superior Court or Supreme Court.—May 8, 1945, No. 130, p. 406, § 10; Mar. 7, 1946, No. 6, p. 18, § 1; July 24, 1952, Nos. 6, 11, 23, pp. 10, 30, 94, eff. July 25, 1952.

§ 72. Additional sanctions

(a) Any employer found by the Board or by the National Labor Relations Board created by Act of Congress of July 5, 1935, to have committed any unfair labor practice, and who does not comply with an order relating to such practice issued by the Board which made such finding, shall not be entitled (1) to submit any bid upon any contract to which the Government or any political subdivision thereof, or public service enterprise or agency supported in whole or in part by public funds is a party; (2) to receive any franchise, permit or license, or any grant or loan of public funds from the Government, or any political or civil subdivision or public service enterprise or agency of the Government, for the period of one year after the service upon said employer of said order; Provided, That if said order is completely set aside or reversed by a court of competent jurisdiction, no such disabilities or disqualifications shall be enforced.

(b) Every contract to which the Government, or any political or civil subdivision thereof, or public service enterprise or agency of the Government or any agency supported in whole or in part by public funds is a party shall contain provisions that in the event the Board or the National Labor Relations Board finds that the contractor or any of his subcontractors, or the grantee or borrower of public funds, has committed an unfair labor practice and does not comply with the order issued by the Board which made the findings:

(1) No further payments shall be made after such date to the contractor or to any of his subcontractors, or to the grantee or borrower.

(2) The contract or grant or loan may be terminated.

(3) A new contract or contracts may be entered into or open market purchases be made for the completion of the original contract, charging any additional cost to the original contractor; Provided, that if such order is completely reversed or set aside by a court of competent jurisdiction, all monies due the contractor, grantee or borrower from the date of the issuance by the Board of said order shall be paid him.

(c) For the purposes of this section any declaration by the Board or by the National Labor Relations Board that an employer has not complied with an order issued by the Board making such declaration shall be binding, final and conclusive unless such order is reversed or set aside by a court of competent jurisdiction.—May 8, 1945, No. 130, p. 406, § 11; Mar. 7, 1946, No. 6, p. 18, § 1, eff. Mar. 7, 1946.

§ 73. Public records

Subject to reasonable rules and regulations to be made by the Board, the charges, petitions, complaints, transcripts of testimony, decisions and orders relating to proceedings instituted by or before the Board shall be made public records and be made available for inspection or copying.—May 8, 1945, No. 130, p. 406, § 12, eff. May 8, 1945.

§ 74. Right to strike

Nothing in this subchapter shall be construed so as to interfere with, hinder or in any way restrain the right to strike.—May 8, 1945, No. 130, p. 406, § 13; Mar. 7, 1946, No. 6, p. 18, § 1, eff. Mar. 7, 1946.

§ 75. Cooperation of Board with local and federal agencies

In administering this subchapter the Board shall cooperate with similar governmental agencies or call upon other governmental agencies for assistance and may act as an agent of, or jointly with, the National Labor Relations Board.—May 8, 1945, No. 130, p. 406, § 14, eff. May 8, 1945.

§ 76. Penalties

Any person who willfully disobeys, prevents, impedes, or hinders the Board or any of its authorized agents in the performance of their duties in accordance with this subchapter, or who obstructs the holding of any hearing being carried on in accordance with section 66 or 80 of this title, shall be punished by a fine of not to exceed five thousand (5,000) dollars or by imprisonment in jail for a term of not to exceed one year, or by both penalties in the discretion of the court.—May 8, 1945, No. 130, p. 406, § 17; Mar. 7, 1946, No. 6, p. 18, § 1, eff. Mar. 7, 1946."

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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 1057

EL MUNDO, INC.,
PETITIONER,

v.

PUERTO RICO LABOR RELATIONS BOARD,
RESPONDENT.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

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RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO

TO THE HONORABLE COURT:

Petitioner has prayed that a Writ of Certiorari be issued to review the judgment of the Supreme Court of the Commonwealth of Puerto Rico. This judgment ordered Petitioner:

1. To cease and desist from:

(a) In any manner whatsoever violating the provisions of the collective agreement it entered into, or

which it shall hereinafter enter into, with the Puerto Rico Newspaper Guild, Local 225, Affiliated to the American Newspaper Guild, AFL-CIO.

2. To take the following affirmative action:

(a) To agree to arbitrate the issue that arose on account of the dismissal of employee Julio Cesar Lopez in the light of the collective agreement in force between the parties, specifically Article VII; and should the arbitrator conclude that when the aforesaid employee was dismissed the respondent did not comply with the contractual provisions, he may order the appropriate remedy.

(b) To fix in prominent places in his business the Notice to all Our Employees that is made a part hereof.

(c) To inform the Chairman of the Board within ten (10) days after receiving this Decision and Order, the steps it has taken to comply herewith.

Statement of the Case

The aforesaid judgment was entered by the Supreme Court of the Commonwealth of Puerto Rico on November 26, 1965. It affirmed a decision of the Puerto Rico Labor Relations Board holding that Petitioner committed an unfair labor practice under the Puerto Rico Labor Relations Act, 29 LPRA 61 et seq. (Petitioner's Brief, Appendix C, p. 18a) This Act makes the breach of a labor contract an unfair labor practice.

El Mundo, Inc. seeks review of said judgment claiming that to permit the Puerto Rico statute to be applied to an employer whose operations affect interstate commerce, would be a retrogression to "checkerboard jurisdiction",

multiplicity of tribunals; and diversity of procedures and remedies.[1] Such action, it claims, would operate to frustrate the purpose of the federal legislation and would place an undue burden on interstate commerce. Petitioner also contends that the present matter raises fundamental questions in the administration of federal labor law and policy and that the Supreme Court of the Commonwealth of Puerto Rico has decided important federal questions in a manner which is contrary to the decisions of this Court, and in disregard of clear Congressional intent.

Reasons for Denying the Writ

Petitioner frames the answer to the questions posed, stating that it depends ultimately on whether application of the challenged state law operates to frustrate the purposes of the federal legislation. The crux of his contention lies on the statement that the remedial powers given to Puerto Rico Labor Relations Board by the statute (Puerto Rico Labor Relations Act, 29 LPRA 61 et seq. Petitioner's Brief, Appendix C, p. 18a) may interfere with the federal labor policy. This potential conflict, according to the Petitioner, lies in three grounds:

> (a) Doctrine of "clean hands" embodied in the Act:[2] the provisions in the Puerto Rico Labor Relations Act that permit the Board to dismiss any charge for breach of contract if the charging party is currently in breach of the contract or has not complied with an order of the Board. 29 LPRA 69 (2) (a). (Petitioner's Brief, Appendix C, p. 30a)
>
> (b) Additional sanctions: Any employer who does not comply with a Board's order relating to an unfair

[1] Pages 16 and 17, Petitioner's brief.
[2] Page 15, Petitioner's brief.

labor practice, is prohibited from bidding on any public contract, or from receiving any franchise, permit or license, or any grant or loan of public funds, for a period of one year after the service of the Board's order. 29 LPRA 72 (a), (b). (Petitioner's Brief, Appendix C,[3] pages 35a, 36a)

(c) Any person who willfully disobeys the Board is subject to a fine of up to $5,000 and/or imprisonment of up to one year. 29 LPRA 76. (Petitioner's Brief, Appendix C, p. 37a)

As expressed in the Statement of the Case, Petitioner was ordered to cease and desist from violating the contract and to take the affirmative action there stated. This affirmative action consisted in the specific performance of the contract signed with the union. Specific performance is one of the remedies in actions under section 301. Labor Management Relations Act, 61 Stat. 156, 69 USC, Section 185a (Petitioner's Brief Appendix C, p. 18a). *Steelworkers* v. *American Mfg. Co.*, 363 US 564, 1960; *Steelworkers* v. *Enterprise Wheel and Car Corp.*, 363 US 593, 1960; *Steelworkers* v. *Warrior and Gulf Navigation Co.*, 363 US 574, 1960.

The provisions in the Puerto Rico Labor Relations Act that permit the Board to dismiss a charge for breach of contract when the charging party does not have "clean hands" are designed for application to charging parties. El Mundo, Inc. was not the charging party in the proceedings before the Board. Petitioner was the defendant. There-

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[3] This section of the law seeks compliance, not only of the Puerto Rico Labor Relations Board's orders but also of orders of the National Labor Relations Board. Puerto Rico Labor Relations Act, 29 LPRA sec. 72. The Commonwealth of Puerto Rico has attributed so great importance to collective bargaining that it has forbidden its agencies to deal with employers who violate not only the local law but the federal law.

fore, he could not be aggrieved by a disposition in the law designed for application to charging parties.

Petitioner has neither been forbidden from bidding on any public contract, nor has he been refused any franchise, permit or license or grant or loan of public funds. It has neither been subjected to fines nor any other punishment. It claims no injury because of the application of the Act to his case. In consequence, Petitioner pretends to bring a premature case to the attention of the Court. While the power to issue the writ of certiorari is a comprehensive and unlimited one, it is to be exercised sparingly and only in cases of gravity and importance. *J. I. Case Co.* v. *NLRB*, 321 US 332; *Puerto Rico* v. *Rubert Hermanos, Inc.*, 301 US 543; Rule 38 (5) (a), T 28, Rules, Supreme Court. This petition invokes the power of the Court in a case of limited local interest and claims, as grounds for the issuance of the writ, dispositions of a local law that are inapplicable and have not been applied to his case. *Hendrick* v. *Maryland*, 235 US 610 (1915).

This case poses the problem of the validity of a judgment of the Supreme Court of Puerto Rico enforcing an order of the Puerto Rico Labor Relations Board. The order —a cease and desist order and an order for specific performance of the contract—is of exclusive local interest. The Puerto Rico Labor Relations Act declares all existing collective contracts, as well as those thereafter executed, to be instruments for the promotion of the public policy of the government of the Commonwealth of Puerto Rico, and as such, they were vested with a public interest. The exercise of the rights and the performance of the obligations by the parties to such collective bargaining contracts were therefore made subject to such reasonable regulations as were necessary to effectuate such public policy. The Legislature of the Commonwealth of Puerto

Rico designated only one of its tribunals,[4] the Puerto Rico Labor Relations Board, to regulate the exercise of the rights and duties of the parties to a collective bargaining contract. This declared public policy creates no conflict with the Labor Management Relations Act. There is no expression—from Congress or the courts—that prevents states from adopting reasonable reglementation of collective bargaining contracts. Whether the regulations adopted could conflict with federal labor policy is not before the court in this case because Petitioner has not claimed that, as applied to him, there is such a conflict. Therefore, the problem before the Court is not one of national concern. Section 69 (1) (f) of the Puerto Rico Labor Relations Act, 29 LPRA 69 (1) (f), (Petitioner's Brief, Appendix C, p. 29a) as applied to Petitioner in the aforementioned judgment, is clearly consistent with federal labor policy and as such, creates no issue of national interest.

The Court has enunciated the principles surrounding the doctrine of "preemption" in labor law. The concurrent jurisdiction of state courts over suits for violation of collective contracts was recognized in *Dowd Box Co.* v. *Courtney,* 368 US 502 (1962), and *Local 174, Teamsters Union* v. *Lucas Flour Co.,* 369 US 95 (1962). This Court has recognized the authority of an "appropriate state tribunal" to deal with a breach of contract under Section 301 (a). Therefore, the states are free to allocate the power to adjudicate controversies involving breaches of collective contracts as they deem convenient. *Dreyer* v. *Illinois,* 187 US 71; *Tool & Die Makers* v. *General Electric*

[4] The Legislature of Puerto Rico referred to the Puerto Rico Labor Relations Board as an "adequate tribunal" capable of enforcing the public policy embodied in the act. Puerto Rico Labor Relations Act, Article 1 (4), 29 LPRA 62(4) (Petitioner's Brief, Appendix C, p. 19a). See also *Tool and Die Makers* v. *General Electric Co., infra,* and *Tecumseh Products Co.* v. *Wisconsin Board, infra,* in relation to the similar treatment given to the Wisconsin Board.

Co., 170 F Supp. 945; *Tecumseh Products Co.* v. *Wisconsin Board*, 126 NW 2d. 520. This is precisely what the Commonwealth of Puerto Rico has done in granting exclusive primary jurisdiction to a specialized administrative tribunal, the Puerto Rico Labor Relations Board, over breaches of contract, subject to judicial review by the Supreme Court of the Commonwealth of Puerto Rico. (29 LPRA 70 (2) (a), (b). (Petitioner's Brief, Appendix C, p. 32a)

The "potential conflict" to which this Court referred in the second *Garmon* decision (*San Diego Building Trades Council* v. *Garmon*, 359 US 236, 1959) is not so broad as Petitioner pretends. In *Garmon* the Court was worried about "peaceful conduct . . . arguably protected or prohibited" by the unfair labor provisions of the Labor Management Relations Act. The breach of a collective contract is neither protected nor prohibited by the unfair labor provisions of the federal law. Only conduct that is potentially subject to exclusive federal regulation under Labor Management Relations Act, conduct that can be an unfair labor practice, can create the kind of conflict the Petitioner invokes. For these reasons the *Garmon* decision has not been considered applicable to actions involving breaches of contract. (*Smith* v. *Evening News Association*, 371 US 195, (1962).

Petitioner contends that the rationale of *Garmon*, which excludes state court jurisdiction over unfair labor practices in order that the National Labor Relations Board may be free to develop a consistent federal policy, applies equally to exclude state administrative agency jurisdiction over actions that could be brought under section 301. This section, however, does not confer exclusive jurisdiction to one expert tribunal for the development of federal policy. On the contrary, Section 301 contemplates the exercise of

concurrent jurisdiction by federal and state courts and tribunals. The possibility of conflict between administrative agencies and courts is no greater than the possibility of conflict among the courts themselves, with uniformity ultimately dependent in either case on review by the United States Supreme Court.

The problem posed before the Court is not whether the Puerto Rico Labor Relations Board is or is not bound to apply federal substantive law. There can be no such problem. The law applied by the Puerto Rico Labor Relations Board and the Supreme Court of the Commonwealth of Puerto Rico is consistent with federal labor policy. There is no conflict—potential or otherwise—between the Commonwealth's Supreme Court decision in this case and the doctrines established by this court. *Steelworkers* v. *American Mfg. Co., supra; Steelworkers* v. *Enterprise Wheel and Car Corp., supra; Steelworkers* v. *Warrior and Gulf Navigation Co., supra.* The highly speculative character of the "potential" conflicts adduced by Petitioner are not enough to justify this Court's involvement in the instant case. In consequence, this is not the proper case for the Court's consideration of the question whether a state's Act which defines as an unfair labor practice a breach of a collective contract, contravenes Section 301 (a) of the Labor Management Relations Act.

Petitioner also contends that the creation by Congress of a federal forum for the private litigation of breaches of contracts excludes all other state forums to deal with such violations. As was pointed out by this Court in *Textile Workers* v. *Lincoln Mills,* 353 US 448: "The legislative history makes clear that the basic purpose of section 301 (a) *was not to limit but to expand, the availability of forums for the enforcements of contracts* made by labor organizations . . ."

Besides, when Congress rejected the creation of a federal unfair labor practice for breach of contract and left this field to the "usual processes of the law", in Colorado,[5] Hawaii,[6] Minnesota,[7] Wisconsin,[8] and in the Commonwealth of Puerto Rico,[9] as part of the "usual processes of the law", breaches of contracts were dealt with as local unfair labor practices.

Commenting on this decision by Congress, this Court said in *Dowd Box* v. *Courtney*, 368 US 502 (1962):

> "It is implicit in the choice Congress made that 'diversities and conflicts' may occur, no less among the courts of the eleven federal circuits, than among the courts of the several States, as there evolves in this field of labor management relations that body of federal common law of which *Lincoln Mills* spoke. But this not necessarily unhealthy prospect is no more than the usual consequences of the historic acceptance of concurrent state and federal jurisdiction over cases arising under federal law. To resolve and accommodate such diversities and conflicts is one of the traditional functions of this Courts."

A writ of certiorari should not be issued in this case. Petitioner has not shown that the decision of the Supreme Court of Puerto Rico has deviated, in a detrimental way, from established federal labor policy. On the contrary, the Commonwealth's decision is fully consistent with estab-

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[5] Colorado Labor Peace Act, approved April 1, 1943.

[6] Revised Laws of Hawaii, Title 11, Labor, Secs. 90-1 to 90-19, approved May 21, 1945.

[7] Minnesota Statutes, 1941, Chapter 179, as amended by laws 1943.

[8] Wisconsin Employment Peace Act, 1939.

[9] Act 130, approved May 8, 1945, amended by Act No. 6, March 7, 1946, 29 LPRA Sec. 61, et seq.

lished federal labor policy. It is obvious that Petitioner is seeking an advisory opinion on issues which are not present in this case.

Conclusion

For the above-mentioned reasons, this Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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